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SUPREME JUDICAL COURT

No. SJC-11530

EMORY G. SNELL,JR.,
Appellant,

v.

OFFICE OF THE CHIEF MEDICAL EXAMINER,
Appellee.

ON APPEAL FROM DENIAL OF SINGLE JUSTICE RELIEF IN THE NATURE OF MANDAMUS, TO ENFORCE ADMINISTRATIVE ORDER FROM SUPERVISOR OF PUBLIC RECORDS

BRIEF OF APPELLANT

EMORY G. SNELL,JR., Pro se
965 Elm Str.
Concord, Ma. 01742-2119

Dated: 19 October 2013

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ISSUES PRESENTED

A- Where a custodian (OCME) has been ordered to provide appellant public records through an March 8, 2013 Administrative Order under Legislative authority vested in the Supervisor of Public Records (SPR), and that custodian (OCME) refuses to comply, does appellant have right to judicial intervention in the Supreme Judicial Court?

B- Where a custodian (OCME) having been ordered to provide appellant public records in ten (10) days, and refuses to do so, does appellant have the right pursuant to c.66, §10(b) to enforce a March 8, 2013 Administrative Order by the Attorney General, and upon Attorney Generals refusal to act, have a judicial right of enforcement per c.66, §10(b), where "... [T]he supreme judicial or superior court SHALL **have** jurisdiction to order compliance?

C- Where c.66, §10(b) specifically contains that explicit mandatory predicate SHALL, regarding the Supreme Judicial Court's jurisdiction to enforce the OCME's failure to comply with the March 8, 2013 SPR Admin. Order, was it abuse of discretion for the single justice to deny relief?

Statement of the Case

In 1995, Appellant was convicted in the Barnstable Superior Court of Murder in the First Degree, and sentenced to natural life w/o possibility of parole. See, Record Appendix (R.A.) #1.

On or about 2003, Appellant contacted Chief of Pathology for a mid-atlantic biosciences university, Dr. Ed Friedlander (Dr. Friedlander), and inquired if the doctor would review the autopsy materials of Elizabeth Snell (Mrs. Snell) in the control and custody of the Massachusetts Office of the Chief Medical Examiner (OCME). Dr. Friedlander agreed, and whereupon completion of his initial analysis, requested that he be provided with those histology - tissue samples - taken by OCME Dr. Zane.

A letter to the OCME was sent inquiring as to the process &/or requesting each tissue slide of the autopsy of Mrs. Snell. R.A. #2.

After that mircoscopic examnation of sixteen (16) tissue slides, Dr. Friedlander made an alarming discovery, to wit; Dr. Zane had examined 'heart & liver' tissues of three (3) people. Among those microscopically examined by Dr. Zane were; the heart of an Infant, as well as, liver from an Unknown adult, to conclude that Mrs. Snell's death was a result of 'asphyxia due to smothering.'

Expressly due to this incredible finding, Dr. Friedlander advised appellant to contact a Board Certified pathologist.

R.A. #3. As per Dr. Friedlander's advice, appellant engaged Drs. Thomas Young, and former OCME Chief of Staff Dr. Stanton Kessler. R.A. ##4,5.

Independent of each other, Drs. Young and Kessler reviewed all the autopsy materials of Mrs. Snell, including the recuts, and like Dr. Friedlander, by way of specialized scientific experience and knowledge, decided beyond a medical certainty, that Mrs. Snell's death was more likely than not, one of 'natural causes.' id.

Before, and during appellant's wrongful conviction, various media sources began to expose OCME Dr. Zane's incompentence in homicide autopsys. R.A. ##6-12.

Appellant was additionally informed by Dr. Kessler's "Report" that Dr. Zane had been ordered to do homicide autopsys only while being supervised by either Drs. Weiner, Kessler, or Chief Medical Examiner Richard Evans. id. at 5.

Dr. Kessler as Dr. Zane's supervisor, and through personal knowledge, remarked that Dr. Zane was 'negligent,' and had been since his hiring by the OCME. ibid. Dr. Kessler first described Dr. Zane's inability to successfully complete his "Fellowship" training, supervised by then Chief Medical Examiner for the State of Maryland, Dr. James Smizalek. Dr. Smizalek ordered Dr. Zane to undergo an additional one year of 'Fellowship' training. id. Dr. Kessler opined that due to "insufficient" funding the OCME could not fire Zane.

Accordingly, Dr. Young by "Analysis" of the autopsy of Mrs. Snell, found that Dr. Zane had utilized multiple peoples tissue samples, and determined that his conclusion was arrived at by discovery of "autolyzed" and "non-autolyzed" liver material under the slides. Dr. Young attested that Mrs. Snell's death was not 'asphyxia due to smothering,' but in fact, more likely a natural cause death, to wit; "Sudden Heart Stoppage." id. R.A. #4.

Appellant through private counsel, and particularly arising from all the independent pathology, as well as, the vast number of media articles exposing Dr. Zane's incompetent homicide autopsys, motioned the Barnstable Superior Court on Sept. 11, 2011, to Expand the scope of the 2005 OCME discovery Order, to include personnel investigations of Dr. Zane. To date, no action by the court has enabled appellant access to exculpatory BRADY materials to further underpin his Actual Innocence claim, and that unassailable finding that Dr. Zane could not have performed a autopsy on Mrs. Snell that was consistent with that medical evidence examined by Dr. Zane to support an aphyxial death. R.A. #7.

Indeed, because the lower court will not act to expand the scope of judge Connon's 2005 OCME discovery order, appellant undertook a Demand for Public Records of the OCME, on or

about Oct. 15, 2012. R.A. #8. Appellant demanded by way of specific twenty-seven paragraph inquiry to the OCME any and all records, memoranda, or any other information directly attributable to OCME Dr. Zane. R.A. #9.

On or about Oct. 30, 2012, appellant's Public Records Demand to the OCME was denied. R.A. 10.

Appellant by timely appeal, sought relief from the OCME Public Records bar, pursuant to 950 CMR 32.et seqq. R.A. #11. Whereupon review, Supervisor of Public Records (SPR) Shawn A. Williams (Williams) found appellant's appeal had merit, and through March 8, 2013 Administrative Order (Admin) commanded the OCME to comply with appellant's demand within ten (10) days. id.

Despite the Admin order command of the SPR, OCME general counsel Jacqueline Fathery (Fathery) instead provided appellant general and non-specified OCME documents, none specific to appellant's Oct. 15, 2012 twenty-seven paragraph demand. R.A. 12.

Appellant again appealed to the SPR, and Fathery responded by providing public records not pertinent to appellant's "prior to 1995" demand.

Without any reasonable remedy, as well as, the Office of the Attorney General (Coakley) failure to enforce that March 8, 2013 Admin order, appellant sought 950 CMR 32. 09 enforcement through the single justice pursuant to

c.249, §5 Mandamus. R.A. 13. Appellant requested that the single justice exercise its extraordinary jurisdiction to compel Fathery to obey the March 8, 2013 Admin Order. The single justice refused to grant Mandamus, or order Fathery to obey the SPR Admin order, and instead, abused that discretion by sending the matter to the superior court, where no action has been undertaken for more than two (2) plus years. R.A. 14.

From the single justice denial to date, appellant has been denied exculpatory BRADY material, in the form of Public Records, or 950 CMR 32.09 enforcement of that March 8, 2013 Admin Order that has the Force of Law.

Appellant timely appealed the denial of relief to enforce the March 8, 2013 Admin Order to the Full Bench of the Supreme Judicial Court, seeking Further Appellate Review (FAR) on inter alia, claims of deprivation of the statutory entitlement to transparency of the Public Records Act, and that contempt of the OCME to comply.

Appellant, appearing Pro se, without benefit of counsel, requests that upon those cites - authorities - and justifications afforded by the Public Records Act, that this most Honorable Court grant such equitable remedies to afford appellant Due Process of Law.

FACTS

The determination of whether the Massachusetts Public Records Act (Act) has the Force of Law, and can be enforced against a non-complying State (OCME) agency, is a material issue that has not been reached in the instant case. And, whether a SPR issued Admin Order can be enforced to ascertain Due Process Of Law, when the question of an underlying criminal conviction is challenged on the reliability of the scientific evidence, especially, when Newly Discovered exculpatory BRADY materials were uncovered by a 2005 Court Order commanding the OCME to open its entire autopsy file to appellant for inspection.

Further, whether c.4, §7 Cl26; c.66, §10(a)(b), and 950 CMR 32.et seqq., can be enforced through the inherent jurisdiction of the Supreme Judicial Court's single justice by that extraordinary measure of c.249, §5 Mandamus.

Whether after more than two (2) plus years of inaction by the lower court on appellant's Motion to Expand The Scope Of The 2005 Order To Include Personnel Investigations of OCME Dr. Zane denies Due Process of Law, and whether Public Records Act demands provide another rational vehicle to ascertain exculpatory material relevant to claims of deprivation of fundamentally fair trial, or Due Process.

Further, whether bar to enforcement of Admin Order is an abuse of discretion, particularly, whereas, enforcement may be had in the Supreme Judicial Court, without first seeking a delayed response from the lower court to appellant's per se prejudice, to wit; continued unlawful confinement as an Actual Innocent.

Whether 950 CMR 32.09 affords appellant a right to enforcement by the Office of the Attorney General, when such regulation speaks specifically to such a remedy.

Finally, does the fact that newly discovered material BRADY exculpatory evidence that unassailably illustrates that appellant is an Actual Innocent wrongly imprisoned for eighteen (18) years, substantial enough to invoke arts. 1, 11, 12 & 29 of the Massachusetts Declaration of Rights, that muster a showing of extraordinary circumstances sufficient to afford appellant Mandamus relief, and whereas, denial of Mandamus by the single justice, is in and of itself a bar to well established State and federal constitutional substantive and procedural Due Process.

ARGUMENT

Appellant correctly argues that the Massachusetts Public Records Act, provides any citizen access to any agency's records, with very few exceptions. Furthermore, does c.4, §7 Cl26; c.66, §10(a)(b), and 950 CMR 32.et seqq.,

give appellant, or anyother citizen an expectation that once a Supervisor of Records (SPR) has issued an Administrative Order (Admin) that such a Order will be obeyed.

Accordingly, does appellant or anyother citizen have a reasonable expectation that once an Admin order is issued, and subsequently disobeyed, that enforcement can be had through any court of inherent jurisdiction, insomuch as, it is well established that agency regulations duly promulgated pursuant to Legislative grant of power, have the force of law.

Finally, as is the instant case, an Actual Innocent wrongly imprisoned for eighteen years as a direct causation of an incompetent OCME homicide autopsy that contained tissue samples of Three different people, sufficient enough to invoke those extraordinary circumstances required to pass c.249, §5 Mandmus review.

In each of those questions asked, appellant correctly opines that seeking enforcement of the March 8, 2013 Admin Order was proper by way of c.249, §5 Mandamus, and that the single justice denial was per se abuse of discretion.

I. Mass.Gen.Law c.4, §7 Cl26 Provides That Every Citizen Shall Have Access To Public Records In The Custody Of Any Public Agency

The founding fathers of Massachusett strove to assure that the citizens would have a transparent government.

In that endeavor, and through specific Legaislative enactment, the Massachusetts Public Records Act (Act) was embodied in some form or another since 1851. Unlike the federal Freedom of Information Act (FOIA) enacted by Congress in 1966, and amended in 1974, there are some parallel protections, albeit, in Massachusetts, its citizens presume that every government record is public, unless withheld under one of nineteen exemptions.

At bar, through inter alia, c.4, §7 Cl26; ATTORNEY GENERAL v. ASST. COMSR OF THE REAL PROPERTY DEPT. OF BOSTON, 380 Mass. 623, 625 (1980)(the stautory exemptions are to be strictly and narrowly construed), appellant sought by way of Demand, twenty-seven individual Act requests for any and all records specific to OCME Dr. Zane, with such emphasis on all materials "prior to" 1995.

Notwithstanding that ten (10) day response requirement, appellant did not receive any answer to his Demand, and when such answer finally arrived, it took the form of a denial, without any further explanation. See, c.66, §10 (a-b); 950 CMR 32.05(2).

Appellant correctly argues that per c.4, §7(26), the Act defines public records as: "materials which have already been 'made or received' by a public entity." Op. ATT'Y GEN. 157, 165 (May 18, 1977). Therefore, the Supervisor of Public Records (SPR) rightly granted appellant's "appeal"

and properly issued an Admin Order on March 8, 2013, compelling the OCME to comply with appellant's twenty-seven paragraph demand within ten (10) days.

Despite that statutory definition of "public records," c.4, §7(26)(a-t), which certain exemptions exist, appellant strongly contends that the SPR Admin Order, which has the force of law, DaLOMBA's CASE, 352 Mass. 598, 603 (1967)("Once an agency sees fit to promulgate regulations, those regulations have the force of law"), those certain exemptions where already decided to appellant's favor, and it is quite noteworthy, in that general counsel Fathery (Fathery) for the OCME did not seek either change, clarification, or appeal of the SPR Admin Order, she simply did not obey it to appellant's per se prejudice. ATT'Y GEN., supra, 380 Mass. at 625.

The Law partcularly provides that an agency in possession of records may, invoke a statutory exemption. c.4, §7(26)(a). Here, Fathery did, and was overruled on appeal by the SPR, and the March 8, 2013 Admin order issued, without appeal or clarification by Fathery.

Indeed, as evinced by the record, the SPR recited in his March 8, 2013 Admin Order, with specificity, the definition of the two statutory exemptions, holding that neither applied to the appellant's demand.

In fact, the SPR made referance to the claimed statutory exemption invoked by Fathery, and declined to permit them to deny appellant's record demand. It was partcularly telling, when the SPR informed Fathery that her attempt to assert a 'blanket' statutory exemption was not persuasive, and strongly against public record statutory intent. G.L. c.66, §10(a); REINSTEIN v. POLICE COMSR OF BOSTON, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not blanket in nature).

Suffice it to say, appellant was entitled to all the previously demanded OCME records, as the SPR considered and dismissed Fathery's frivolous challenge, therefore, appellant's right to enforcement pursuant to c.249, §5 Mandamus was justified, and the abuse of 950 CMR 32.09 enforcement of the SPR issued March 8, 2013 Admin Order was improperly denied.

II. Mass.Gen.Law c.66, §10(a-b), Provides That Every Citizen Shall Have Access To Public Records In The Custody Of Any Public Agency

Every document, paper, map, photograph, &etc., as defined by the Public Records Act, which is made or received by a government (OCME) entity or employee (Dr.Zane) is presumed to be a public record. See, MASS. BAY TRANSP. AUTH v. STATE ETHICS COMM'N, 414 Mass. 582 (1993); GLOBE NEWSPAPER v. MASS. BAY TRANSP. AUTH RETIREMENT BD., 416 Mass. 1007 (1993).

Nonetheless, under c.66, §10(a-b), appellant properly demanded twenty-seven paragraphs specific to OCME Dr. Zane, and despite an initial denial, was provided through 'appeal' a March 8, 2013 Admin Order commanding OCME Fathery to comply within ten (10) days, which she refused to obey. The Act particularly gives appellant certain statutory rights to all records in the possession of any state agency. 950 CMR 32.03(5); c.66, §10(a-b).

Appellant provided a demand with specificity, that alerted the OCME records custodian with clear information as to what, and whose public records he sought access to. 950 CMR 32.05(4). But notwithstanding that specificity to Dr. Zane, and all OCME personnel investigations "prior to" 1995 on Dr. Zane, Fathery instead choose to ignore her c.228, §38 (attorney oath), and comply with the Admin Order. Thereby, leaving appellant only remedy through judicial intervention, ergo, c.249, §5 Mandamus.

Accordingly, appellant additionally rightly opines that he did not seek release of statutorily protected c.41, §97D (rape or sexual assault reports), or c.6, §172 (CORI criminal information), the only two exemptions that would have permitted Fathery's disobedience of the SPR March 8, 2013 Admin Order. c.66, §10(a); REINSTEIN, supra 378 Mass. at 289-90. Therefore, appellant has made a proper showing of the abuse of discretion by the single

justice refusal to correct that bar to public records of OCME Dr. Zane by c.249, §5 Mandamus, when appellant correctly illustrated per se prejudice to those State Public Records laws. This Court must reverse and grant appellant that previously denied access to the twenty-seven paragraph demand, as found by the SPR March 8, 2013 Admin Order.

III. Code Of Massachusetts Regulation 950 CMR 32.et seqq., Provides That Every Citizen Shall Have Access To Public Records In The Custody Of Any Public Agency

Appellant contends that 950 CMR 32.et seqq., is the sole vehicle that the SPR provides every citzen with access to records generated by all public entities. c.66, §1; 950 CMR 32.00. Through 950 CMR 32.00, the authority to regulate public records access to the citizens of the State is vested in the SPR. See, 950 CMR 32.01-09. In fact, the scope of 950 CMR 32.00-02, clearly asserts "950 CMR 32.00 'Shall' be construed to ensure the public prompt access to all public records in the custody of the state governmental entities and in the custody of all subdivisions of the Commonwealth ... 950 CMR 32.00 'Shall' not limit the availability of other remedies provided by Law.

Moreover, as further evinced by the SPR March 8, 2013 Admin Order, Fathery was instructed that she had ten

(10) days 950 CMR 32.05(2) in which to fully comply, the underlying record unequivocally shows that such compliance did not take place. As with c.4, §7 Cl26; c.66, §10(a-b), 950 CMR 32.et seqq., assures that all records stored and generated by every governmental entity, is made available for public access. The fact hereto exists, that despite the SPR March 8,2013 Admin Order, OCME Fathery just simply ignored that regulatory directive, which has the force of law. For that reason, relief for appellant through enforcement - 950 CMR 32.09 - was proper pursuant to c.249, §5 Mandamus, and the denial of the single justice was an abuse of discretion, mandating this court's reversal, and commanding OCME Fathery to forthwith obey the SPR March 8, 2013 Admin Order.

IV. 950 CMR 32.et seqq., By Way Of Legislative Grant Of Power, Affords The Supervisor Of Public Records Sole Control Over Every Citizens Demand For Access To Public Records

The Legislature conferred to the Supervisor of Records (SPR) the authority to render determinations on the status of public records. As is undeniably illustrated by the appellant asserts that on March 8, 2013, the SPR under guise of that Legislative authority, did in fact, properly direct that the OCME Faherty had ten (10) days to fulfill appellant's public record demand. Again, appellant opines that had the OCME Faherty disagreed with the SPR March 8, 2013 Admin Order,she didn't voice such disagreement in

any form that appears in the record, it is noteable to observe that the record is silent on any disagreement of the Admin Order.

Appellant additionally contends that this court has interpreted the SPR's authority to include issuing decisions, like that March 8, 2013 Admin Order, and such findings on whether public records are privileged. See, HULL MUNICIPAL LIGHTING v. MASS. MUNICIPAL WHOLESALE ELECT. CO., 414 Mass. 609, 610 (1993)(SPR may delineate whether documents are privileged or exempted from the Public Records Law)(citation omitted).

Therefore, it is properly averred that the SPR on March 8, 2013, was acting under such competent authority granted by the Legislature, and upheld by this court's precedent. The total disobedience by OCME Fathery, requires this court to adjudge appellant has a right to those public records previously ordered, but continually denied.

V. 950 CMR 32.09 Provides The Supervisor Of Public Records Enforcement Of Administrative Orders Not Obeyed By Any Public Agency

Pursuant to 950 CMR 32.09 (Enforcement), the SPR is empowered to see that a custodian who has been ordered to comply with a Public Records Administrative Order, shall promptly comply. When that custodian (OCME) fails

to comply with an issued - March 8, 2013 - Admin Order, the SPR may notify the Attorney General or the appropriate District Attorney of any failure by a custodian (OCME) to comply with any order of the SPR. See, c.66, §10(b); 950 CMR 32.09. The Attorney General refused to act.

In sum, despite the Legislative authority provided the SPR, and enforcement - 950 CMR 32.09 - power accorded him, at bar, appellant has been denied any adequate regulatory, or statutory avenue which to enforce the March 8, 2013 Admin Order, that assumes some parallax, depending on who is viewing it, for the purpose of assuring appellant Due Process of Law. The SPR March 8, 2013 Admin Order must be enforced by this court's finding that the single justice denial of Mandamus relief was abuse of discretion.

VI. 950 CMR 32.09 Has The Force Of Law, And Shall Be Enforced Against Every Massachusetts Agency As A Violation Of Law

When the Legislature granted the SPR exclusive control over the Public Records, it further permitted the SPR to promulgate regulations for its efficient operation, among those, was 950 CMR 32.09 enforcement. It would be illogical and unrational for the Legislature to grant such control and dominion over the public records, without some vehicle to ascertain that once the SPR issued an Admin Order, he would be powerless to see that the custodian did not obey.

At bar, this court has a long history of decreeing that through Legislative grant of power, Massachusetts agencies are empowered to duly promulgate regulations which have the force of law. See, DaLOMBA's Case, 352 Mass. 598, 603 (1967); ROYCE v. COMSR DOC, 390 Mass. 425, 427 (1983)(agency regulations enacted pursuant to Legislative grant of power, generally, have the force of law).

Despite that clear and unambiguous language of 950 CMR 32.09, the SPR March 8, 2013 Admin Order continues to be unenforceable. Truly, in the spirit of well established precedent on regulations having the force of law, this court must agree that OCME Fathery to date, despite the clear mandate of the SPR March 8, 2013 Admin Order, refuses to comply, and that such disobedience stems from civil contempt. See, TOWN OF MANCHESTER v.D.E.Q.E., 381 Mass. 208, 212 (1983)(to constitute civil contempt, there must be a showing of a clear and undoubted disobedience of a clear and unambiguous command)(citation omitted).

Therefore, only one conclusion can be had, insomuch as, the instant record does not evince that OCME Fathery formally appealed the SPR March 8, 2013 Admin Order, but simply, instead just ignored it to appellant's per se prejudice, and when presented with extraordinary circumstances requiring relief in the nature of c.249, §5 Mandamus, the single justice refused to grant appellant his properly

sought after access to the public records demand, he had already been granted by the SPR. This court must uphold 950 CMR 32.09, and enforce that SPR March 8, 2013 Admin Order that has the force of law.

VII. It Was Legal Error For The Single Justice To Deny Appellant Enforcement Of The SPR March 8, 2013 Administrative Order To The OCME, Whereas, That Court Exercises Inherent Jurisdiction Either By c.249, §5, Or c.211, §3

It is beyond cavil that the single justice either by way of c.249, §5 Mandamus, or superintendency c.211, §3, has the power to enforce the March 8, 2013 SPR Admin Order to OCME Fathery. Indeed, long has this court observed that rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action. art. 11, 12 & 29 Massachusetts Declaration of Rights; Cf. NELSON v. ADAMS, 120 S.Ct. 460, 465 (2000) comparing the Fed. Rules of Civil Procedure to those rights afforded by Due Process).

Because the SPR Admin Order of March 8, 2013 has the force of law, it was incumbent upon the single justice to uphold it, by deciding judicially that OCME Fathery disobeyed a clear and undoubted unambiguous command. Moreover, the single justice would have only followed that well trend history of jurisprudence, insomuch as, adhering to decades old precedent respecting agency powers to promulgate regulations to orderly facilitate their duties.

Moreover, the point today is, does appellant have to mire himself down in the lower courts delays to seek prompt enforcement of the SPR March 8, 2013 Admin Order, at present, appellant has been deprived public records access previously granted, for seven (7) months, with no end in sight, as to when he may be afforded that right to the OCME public record demand, that in and of itself, is designed to be a speedy process. See, 950 CMR 32.05(2) (each custodian shall comply with a request ... within ten (10) days). Seven months plus, is a far cry from ten days.

Therefore, a reasonable conclusion can be drawn from the single justice denial of enforcement, that 950 CMR 32.09 has the force of law, and failure to enforce it was abuse of discretion, which requires reversal by this court, to afford appellant due process.

Whereas, "Relief in the nature of mandamus[1/] is extraordinary, and is granted in the discretion of the court where no other relief is available." MURRAY v. COM., 447 Mass. 1010 (2006), citing FORTE v. COM., 429 Mass. 1019, 1020 (1999), this court under that rubic must adjudge that appellant lacked any speedy and just, and inexpensive remedy at law to enforce the March 8, 2013 Admin Order, and that Mandamus is exactly that inexpensive, just and speedy remedy available by law.

1/ - c.66, §10(b) specifically provides "supreme judicial court shall have jurisdiction to order compliance," of a public records Admin Order.

VII. A. Enforcement Of The SPR March 8, 2013 Administrative Order, Or Lack Thereof, Created A Disparity In Treatment To Appellant, Who As An Actual Innocent Wrongly Imprisoned, Deprived Such Material Exculpatory Scientific Evidence, To Deny Appellant Due Process Of Law

Analoguously, enforcement of the March 8, 2013 SPR Admin Order, is no different than a court compelling the government to turn over BRADY exculpatory material. This court is being asked to enforce the SPR Order, that has the probable potential of revealing even more exculpatory material, beyond that already discovered by judge Connon's 2005 OCME discovery order. Where appellant's three independent forensic pathologists, all found that OCME Dr. Zane had inconsistent with standard forensic pathology protocols, utilized three (3) different peoples tissues, One of those an INFANT, to conclude that 52yr. old Mrs. Snell had died as a result of 'asphyxia due to smothering,' when the de facto cause was a natural death, more likely than not "Sudden Heart Stoppage."

Accordingly, this court upon review of those credible scientific analysis, affidavit and report, must reasonably infer, that by enforcing the SPR Admin Order, further material exculpatory evidence will surface to in fact, strongly undermine, if not totally devastate the wrongly found asphyxial death of Mrs. Snell. Due process demands

that appellant in pursuing his newly discovered BRADY exculpatory evidence through prosecution of a New Trial Rule 30 motion, be afforded any public record on OCME Dr. Zane, that has even more potential to destroy any conclusion inconsistent with the medical evidence. The SPR Admin Order, that has the force of law, and was not disputed by OCME Fathery, must be enforced by this court, especially, insomuch as, the outcome of that enforcement uncovers more exculpatory BRADY evidence, intentionally suppressed at appellant's 1995 criminal trial.

At the very least, this court must continue to adjudge that "The fundamental requisite of due process of law is the opportunity to be heard." GRANNIS v. ORDEAN, 234 U.S. 385, 394 (1914).

Reversal of that abuse of discretion of the single justice serves the ends of justice, and upholds that force of law accorded the SPR through Legislative grant of power.

VII. B. Whereas, Appellant Through A 2005 Court Order Of Discovery Of The OCME Autopsy File, Has Motioned The Superior Court To Expand The Scope Of That Aforesaid 2005 Order To Include Personnel Investigations Of OCME Dr. Zane, And No Action Since Sept. 11, 2011 Has Yet Been Taken, It Is A Extraordinary Circumstance Requiring Relief By c.249, §5 Mandamus, As Underlying Newly Discovered BRADY Exculpatory Materials Have Demonstrated Appellant Did Not Receive A Right To Cross-Examine Zane, Or Receive A Fundamentally Fair Trial

Appellant through a December 2012 filing of his New Trial Rule 30 motion, unassailably showed that OCME Dr. Zane's

autopsy of Mrs. Snell, relied upon tissue samples of three different people, for Zane to arrive at his opinion that Mrs. Snell's death was 'asphyxia due to smothering.' In so doing, OCME Zane's finding are now unquestionably subject of review under well established Board Certified standards and pathology protocols. Indeed, it has never been found credible that a determination of death rely upon multiple people, and insomuch as, Zane opined Mrs. Snell's death a homicide, that opinion is seriously placed in jeopardy by this newly discovered BRADY exculpatory medical evidence, which was intentionally suppressed at appellant's 1995 trial.

Insomuch as, the SPR Admin Order already granted giving appellant public records access to OCME Zane's further unknown inconsistent acts of homicide autopsy, this court is not being asked to address any challenge to disputed facts, as such has previously been decided under the SPR's Legislative authority. All that this court is being asked is, where the trial court refuses to act on expanding judge Connon's 2005 OCME discovery order, is appellant's public records demand subject to the same inaction. Where the SPR March 8, 2013 Admin Order has the force of law, this court only need to further enforce same for the sake of equality in treatment. As but for, that wrongful imprisonment, appellant would not have had difficulty

being accorded those public records access afforded to any other Massachusetts citizen.

Finally, by enforcing the SPR March 8, 2013 Admin Order, the probability of more intentional suppressed exculpatory BRADY evidence being discovered, is more likely than not, and such discovery will only further underscore the importance of expanding judge Connon's 2005 OCME discovery order, and the real probability of vindicating yet another Massachusetts Actual Innocent. Fundamental fairness demands that this court afford appellant due process of law, by reversing the denial of Mandamus relief, as well as, forthwith commanding OCME Fathery to obey, comply and adhere to the law.

Conclusion

Wherefor, the Law on Public Records acessibility is firmly embodied by c.4, §7(26); c.66, §10(a-b), and 950 CMR 32.et seqq., to afford appellant unobstructed access, this most Honorable Court must reverse that denial of the single justice, and enforce the SPR March 8, 2013 Admin Order. So moved.

Signed, this 19th day of October 2013 under pain of perjury.

Respectfully submitted,
by, the Appellant,

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Concord, Ma. 01742-2119

Certificate of Compliance M.R.Ap.P.

I, Emory G. Snell,Jr., Appellant, affirm and attest that the attached brief complies with the rules of court that pertain to filing briefs, including but not limited to to M.R.Ap.P. 16(a)(6); R.16(e); R.16(f), R.16(h), R.18, and R.20.

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Certificate of Service

I, Emory G. Snell,Jr., Appellant, hereto certify that (2) copies of the Appellant's (Blue) brief and Record Appendix was served in accord w/103 CMR 481.10 (2d part)(inmate state paid indigent legal mail) on:

Jacqueline Faherty, General Counsel
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Date: 19 Oct. 2013

Emory G. Snell,Jr., Pro se